IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

WP(C).No. 31863 of 2005(R)

PETITIONERS:

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1. P.SUNDARARAJ. S/O.PARAMASSIVA THEVAR,
   AGED 52 YEARS, H.NO.IX/1089,NEW COLONY,
   MUNNAR, K.D.H.VILLAGE, IDUKKI DISTRICT.

2. BEENA VELAYUDHAN, W/O.VELAYUDHAN,
   AGED 46 YEARS, H.NO.X/385, KUDILIL HOUSE,
   DEVIKULAM, KD.H.VILLAGE, IDUKKI DISTRICT.

BY ADV. SRI.N.M.VARGHESE

RESPONDENTS:

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1. THE STATE OF KERALA, TO BE REPRESENTED
   BY THE SECRETARY, REVENUE DEPARTMENT,
   SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR, IDUKKI DISTRICT,
   COLLECTORATE, KUYILIMALA, IDUKKI.

3. THE TAHSILDAR, DEVIKULAM TALUK,
   DEVIKULAM, IDUKKI DISTRICT.

BY SR. GOVERNMENT PLEADER SRI.R.LAKSHMI NARAYAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC 31863/2005

APPENDIX

PETITIONERS' EXTS.

EXT.P1 - A PHOTO COPY OF PATTA NO.LA-10/2000 DATED 29.12.2000 ISSUED BY THE 3RD RESPONDENT IN THE NAME OF THE 1ST PETITIONER.

EXT.P2 - A PHOTO COPY OF TAX RECEIPT NO.35 DATED 5.1.2001.

EXT.P3 - A PHOTO COPY OF RELEVANT PAGES OF THE RATIONAL CARD OF THE 1ST PETITIONER'S FAMILY.

EXT.P4 - A PHOTO COPY OF CERTIFICATE NO.D-488/2001 DATED 26.9.2001 ISSUED BY THE BLOCK DEVELOPMENT OFFICER IN THE NAME OF THE 2ND PETITIONER.

EXT.P5 - A PHOTO COPY OF RESIDENTIAL/OWNERSHIP CERTIFICATE NO.A3-830/2001 DATED 10.10.2001 ISSUED BY THE SECRETARY, MUNNAR GRAMA PANCHAAYAT IN THE NAME OF THE 2ND PETITIONER.

EXT.P6 - A PHOTO COPY OF CERTIFICATE NO.163369 DATED 30.1.2001 ISSUED BY THE UNITED INDIA INSURANCE COMPANY LTD.

EXT.P7 - A PHOTO COPY OF COMMUNICATION NO.1638/A2 DATED 1.2.1996 ISSUED BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT DISTRICT COLLECTOR.

EXT.P8 - A PHOTO COPY OF REPORT OF THE 2ND RESPONDENT DISTRICT COLLECTOR NO.G-4-814 DATED 6.9.72 ADDRESSED TO THE 1ST RESPONDENT GOVERNMENT.

EXT.P9 - A PHOTO COPY OF THE REPLY OF THE GOVERNMENT STUDY REPORT NO.6053/U2/73/RD DATED 18.8.74 ADDRESSED TO THE 2ND RESPONDENT DISTRICT COLLECTOR.

EXT.P10 - A PHOTO COPY OF THE LATEST EXTENDED INTERIM ORDER OF THIS HON'BLE COURT PASSED IN W.P.(C) NO.12834/2005 DATED 31.10.2005.

EXT.P11 - A PHOTO COPY OF THE RESIDENTIAL CERTIFICATE NO.A3-10/2005 DATED 2.12.2005 ISSUED BY THE SECRETARY, MUNNAR GRAMA PANCHAYAT IN THE NAME OF THE 1ST PETITIONER.

EXT.P12 - A PHOTO COPY OF THE BUILDING TAX RECEIPT NO.2 DATED 24.11.2005 ISSUED BY THE SECRETARY, DEVIKULAM GRAMA PANCHAYAT IN THE NAME OF THE 2ND PETITIONER.

RESPONDENTS' EXTS. NIL

/TRUE COPY/

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 31863 OF 2005-R

JUDGMENT

The petitioners are persons in possession of small plots of land in Kannan Devan Hills Village, Devikulam Taluk, Idukki district. The property in the possession of the 1st petitioner is having only an extent of 4.5 cents in Survey No.912 of K.D.H.Village. He has constructed a residential building in it and he is residing there with his family. On his application for assignment of the said plot, the 3rd respondent has assigned the same as per Ext.P1 patta. Ext.P2 is the basic tax receipt, evidencing payment of tax for the said property. The 2nd petitioner is in possession of 3 cents of land in Survey No.20/1 of K.D.H.Village. Steps were taken for assignment of the land on her application. So far, the patta has not been granted to her. But, house construction grant has been sanctioned to her for the construction of a residential building in the said plot by the Block Development Officer, Devikulam, as evident from Ext.P4 certificate. She has constructed a residential building there, which is numbered by the Panchayat. The same is evident from Ext.P5 certificate. The said building has been insured by the United India Insurance Company, as evident from Ext.P6 certificate. Now, the petitioners are threatened with eviction by the revenue officials.

Therefore, this writ petition was filed, seeking appropriate reliefs.

2. The respondents have filed a counter affidavit, stating that the 2nd petitioner is a rank trespasser. Further, the 1st petitioner got patta from an incompetent officer. According to them, the Tahsildar is not competent to issue patta under the Kannan Devan Hills (Resumption of Lands) Act, 1971. Therefore, an enquiry is being conducted into the grant of patta in this and other similar cases.

3. The petitioners are small holders, in which they have built residential buildings also. They are residing there with their families. Therefore, I feel that the claim of the 2nd petitioner for assignment of her land in her possession has to be considered by the District Collector. This Court has already issued directions in W.P.(C) No.2218/2004, in the case of similarly placed persons. If the 2nd petitioner is eligible for assignment in terms of the relevant statutory provisions and the land in her possession is assignable land as per law, prima facie, there is no reason why the said land should not be assigned to her. The claim of the 2nd petitioner in this regard shall be considered by the District Collector within two months from the date of production of a copy of this judgment, after affording an opportunity of being heard to her.

4. In the case of the 1st petitioner, there is already an assignment in

his favour by the Tahsildar. Going by the provisions of the Kannan Devan Hills (Resumption of Lands) Act, the Tahsildar may be incompetent to assign any land vested in the Government. But, the District Collector is authorised by the Government under Section 9 of the Act, to assign land to eligible persons. The 2nd respondent is directed to examine the eligibility of the 1st petitioner for assignment of land and also whether the land already assigned to him is assignable as per the relevant statutory provisions. If the findings on both the points are in favour of the 1st petitioner, the 2nd respondent shall take a decision to assign the land in his favour and issue appropriate proceedings, so that the irregularity in assigning the land to him by the Tahsildar is removed. The decision in this regard shall also be taken within two months from the date of production of a copy of this judgment, after affording an opportunity of being heard to the 1st petitioner. If the petitioners produce a copy of this judgment before the 2nd respondent within one month from today, the interim order granted by this Court will remain in force till the District collector takes the decision as directed above.

The Writ Petition is disposed of as above.

12th December, 2007. **K.BALAKRISHNAN NAIR, JUDGE**.

Nm/